

2008

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Recommended Citation

Ashley Day Drummond, *Peru: Coca, Cocaine, and the International Regime against Drugs*, 14 LAW & BUS. REV. AM. 107 (2008)
<https://scholar.smu.edu/lbra/vol14/iss1/6>

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PERU: COCA, COCAINE, AND THE INTERNATIONAL REGIME AGAINST DRUGS

Ashley Day Drummond*

I. INTRODUCTION

THERE is little dispute that the illicit drug trade is a worldwide issue, affecting health, the economy, political interests, and even civil rights. The cocaine problem, in particular, plagues the Americas as production and distribution rates rise despite much time and money spent in an effort to curb the illegal trade of coca and manufacturing of cocaine. Cocaine, a dangerous narcotic, is derived from the coca plant, a harmless shrub with many uses. Herein lies an ongoing source of tension: the certain need to curb cocaine trafficking and use against the strong desire to continue the practice of coca growing and traditional consumption that has existed in the Andes for thousands of years.

This comment focuses not only on the international drug law but also on current international trade law in the Americas, analyzing the interrelationship between the two regimes. Free trade in the Americas has created “a world with fewer restraints on the circulation of capital and goods” and thus has “stimulated and facilitated the exchange and traffic of drugs” between Peru and ultimately the United States.¹ This point is not made to argue that free trade, in the end, is unhealthy for any party involved, but rather to merely point out the unintended consequences of economic liberalization of which drug traffickers can take advantage, in turn leading to the need for more drug control. The relationship between the two regimes is inverse: as the regime on trade has liberalized, the development of international drug control has taken on a more prohibitionist nature with less flexibility.²

Part II of this comment begins with a statistical survey of the drug problem as it relates to the world, the United States, and Peru and then

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1. BELÉN BOVILLE, *THE COCAINE WAR IN CONTEXT: DRUGS AND POLITICS* 79 (Lorena Terando trans., Algora Publishing) (2004).

2. See Chantal Thomas, *Disciplining Globalization: International Law, Illegal Trade, and the Case of Narcotics*, 24 MICH. J. INT'L L. 549, 562 (2003).

provides background on coca and cocaine, including a history of coca and its importance to the culture of Peru, including its uses—many of which are still relevant today. More importantly, this part emphasizes the differences between coca and cocaine. Part III explains the modern coca and cocaine industry, their effects on the environment and on corruption in Peru, and the *cocalero* (coca farmer) movement to defend coca growing. Part IV discusses economic liberalization in the Americas, namely the North American Free Trade Agreement and its impact on the illicit drug trade. This part explains how drug traffickers use this agreement to their favor and also discusses violence associated with organized crime. Parts V and VI analyze the current state of international and Peruvian law, respectively, as related to coca and cocaine. Finally, Part VII assesses strategies employed in the war on illicit coca production, including eradication, law enforcement, alternative development, and narcotics education.

The comment concludes that with regard to the cocaine problem between Peru and the United States, and the cultural clash that can easily result, we must balance strategies to fight the war on drugs, taking into account local Peruvian concerns, needs, and practical expectations. Peru must also share the burden of controlling its illicit market through its own drug legislation. To that end, it is important to maintain flexibility in international narcotics treaties to allow for independent drug policies by member countries. With these strategies in tandem, hopefully the global cocaine problem will decline without a substantial cost to the vitality of Peru's most sacred crop.

II. COCA AND COCAINE

The drug trade—including that of cocaine—affects countries worldwide, and economic and social consequences are especially felt in the United States. Cocaine is manufactured from one of several alkaloids present in the coca plant, which is primarily cultivated in the Andean countries of Peru, Colombia, and Bolivia.³ Coca growing has existed in this region for thousands of years and plays a vital role in the ancient and current Andean culture.⁴ Coca's utility comes from religious and ritualistic practices, medicinal needs, practical uses, and social consumption. Coca is very different from cocaine, but, nevertheless, the plant carries a stigma as a result of the harms caused by cocaine.

A. STATISTICAL SURVEY OF THE DRUG PROBLEM

The drug problem is a global issue. Illegal drugs comprise nearly 10 percent of total world trade, yielding \$400-\$500 billion per year for the

3. Daniel Tyler Cook, *The Case for Coca and Cocaine: Bolivia's March to Economic Freedom*, 13 MINN. J. GLOBAL TRADE 57, 59 (2004).

4. JOSEPH A. GAGLIANO, *COCA PROHIBITION IN PERU: THE HISTORICAL DEBATES* 14 (Univ. of Ariz. Press) (1994).

global market.⁵ In fact, illegal drug production “exceeds car production as a proportion of the global economy.”⁶ According to the United Nations Office on Drugs and Crime, there are approximately 200 million illegal drug users worldwide, representing about 5 percent of the world’s population between the ages of fifteen and sixty-four.⁷ Few countries are not affected, either directly or indirectly, from the global drug trade: “Among this population are people from almost every country on earth. More people are involved in the production and trafficking of illicit drugs and still more are touched by the devastating social and economic costs of this problem.”⁸ Regarding cocaine specifically, use in the Americas, especially North America, accounts for nearly one-half of the global cocaine market.⁹

Of the drugs that threaten the United States, “cocaine continues to be a major domestic concern.”¹⁰ The 2007 International Narcotics Control Strategy Report (2007 INCSR) estimates that between 517-732 metric tons of cocaine, originating in the Andean counties of Colombia, Bolivia, and Peru, enter the United States each year, “feeding addiction, fueling crime, and damaging the economic and social health” of the country.¹¹ According to the 2005 National Survey on Drug Use and Health, nearly thirty-four million Americans over the age of twelve have tried cocaine at least once, equaling nearly 14 percent of that age group.¹² The White House Office of National Drug Control Policy’s latest report on the economic costs of drug abuse in the United States (published every four years) estimates that illegal drugs drained \$180 billion from the American economy in 2002.¹³ During the first half of this decade, the United States spent \$5.4 billion on combating domestic cocaine use and towards the

5. Thomas, *supra* note 2, at 575 n.13 (quoting Kal Raustiala, *Law, Liberalization & International Narcotics Trafficking*, 32 N.Y.U. J. INT’L L. & POL. 89, 90 (1999)).

6. *Id.* at 553.

7. U.N. OFFICE ON DRUGS & CRIME, 2006 WORLD DRUG REPORT at 33, U.N. Sales No. E.06.XI.10 (2006), available at <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2006.html> (select “Volume 1: Analysis – Full Report”) [hereinafter 2006 WORLD REPORT]. Of this total, only about one-half use drugs regularly (at least once a month), and the majority of this use is related to *cannabis* (marijuana). *Id.* at 8.

8. U.N. Office on Drugs & Crime, <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2006.html> (last visited Feb. 4, 2008).

9. U.N. OFFICE ON DRUGS & CRIME, 2007 WORLD DRUG REPORT at 82, U.N. Sales No. E.07.XI.5 (2007), available at <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2007.html> (under “Full Report,” select “English”) [hereinafter 2007 WORLD REPORT].

10. 2007 INCSR ANN. REP. 15, available at <http://www.state.gov/p/inl/rls/nrcrpt/2007/> (select “Volume 1”) [hereinafter 2007 INCSR].

11. *Id.* at 16.

12. White House Office of Nat’l Drug Control Policy, Drug Facts & Figures on Cocaine, <http://www.whitehousedrugpolicy.gov/drugfact/cocaine/index.html> (last visited Feb. 5, 2008).

13. White House Office of Nat’l Drug Control Policy, Executive Office of the President, The Economic Costs of Drug Abuse in the United States 1992–2002, at vi (2004), available at http://www.whitehousedrugpolicy.gov/publications/economic_costs/economic_costs.pdf. This figure represents costs associated with health care, crime, and loss of productivity. *Id.*

effort to extinguish coca in the Andes, but the Congressional Research Service concluded that this spending did not lower the price of cocaine in the United States.¹⁴

The prevalence of cocaine in our society is sadly affecting children at shockingly young ages. In a 2006 University of Michigan study, nearly 50 percent of the twelfth graders surveyed claimed that it would be fairly easy or very easy to get cocaine.¹⁵ Even 20 percent of the eighth graders surveyed claimed it would be fairly easy or very easy to get cocaine powder.¹⁶ Of the twelfth graders surveyed, 8.5 percent actually reported use of cocaine, a slight increase from the previous year.¹⁷ Only 62 percent of this group reportedly thought that people risk harming themselves by occasionally trying cocaine powder.¹⁸

Peru is the world's second-largest coca-growing country, after Colombia.¹⁹ According to the United Nations, production of cocaine in Peru in 2006 totaled approximately 280 tons, representing one-third of the cocaine production worldwide.²⁰ Cocaine production funneled \$445 million of illicit money into Peru's economy in 1998, equaling about 1 percent of the nation's gross domestic product.²¹ According to the U.S. Drug Enforcement Agency, 30 percent of the cocaine entering the United States originates in Peru (smuggled by Mexican mafias).²² Since 2000, the United States has poured between \$300-\$400 million in aid but has "failed to rein in Peru's coca-growing peasantry."²³

Although Peru has surpassed its recent annual goals for coca eradication, it still may not have kept up with expanding coca cultivation.²⁴

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14. *Coca on the March in Peru*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), July 1, 2005, available at <http://stopthedrugwar.org/chronicle-old/393/cuzco.shtml> [hereinafter *Coca on the March*].
 15. Nat'l Inst. on Drug Abuse & Univ. of Mich., Monitoring the Future Study 2006 Drug & Alcohol Data Tables, Dec. 2006, at tbl. 13, available at <http://monitoringthefuture.org/data/06data.html#2006data-drugs>.
 16. *Id.* tbl. 11.
 17. *Id.* tbl. 1.
 18. *Id.* tbl. 7. Of note, however, when this group was asked if people risked harming themselves by trying cocaine (as opposed to cocaine powder) occasionally, the percentage increases to nearly 70 percent. *Id.*
 19. Lucien O. Chauvin, *In Peru, A Move to Get Farmers to Trade in Fish Rather Than Coca*, CHRISTIAN SCI. MONITOR, Jan. 4, 2007, at 5, available at <http://www.csmonitor.com/2007/0104/p05s01-woam.html>.
 20. 2007 WORLD REPORT, *supra* note 9, at 64-65.
 21. Eric J. Lyman, *U.S. Accused of Creating Blight, Killing Coca Plants and Harming Other Crops*, SAN FRANCISCO CHRON., Nov. 4, 1999, available at http://www.ericjlyman.com/Chronicle_coca.html.
 22. Ángel Páez, *Mexican Cartels Find Fertile Ground in Peru's Coca Fields*, INTER PRESS SERVICE NEWS AGENCY, Aug. 28, 2006, <http://ipsnews.net/>, available at "8/28/06 INTERPSENG 00:00:00" ON WESTLAW.
 23. *In Break With Campaign Promises, Peru's New Government Will Accelerate Coca Eradication*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Sept. 15, 2006, available at http://stopthedrugwar.org/chronicle/453/peru_to_eradicate_coca [hereinafter *Campaign Promises*].
 24. See 2007 INCSR, *supra* note 10, at 132; 2006 INCSR ANN. REP. 116, available at <http://www.state.gov/p/inl/rls/nrcrpt/2006/> (under "Volume 1: Drug and Chemical Control," select "INCSR (PDF format)") [hereinafter 2006 INCSR].

While coca cultivation has decreased markedly since the first half of the 1990s (when cultivation was over 100,000 hectares per year), it has increased slightly during this decade (comparing cultivation around 50,000 hectares in recent years to a dip below 40,000 hectares in 1999).²⁵ Currently, these crops are producing approximately 100,000 metric tons of dry cocaine leaf each year.²⁶

B. COCA NOT COCAINE

Many people do not realize the difference between cocaine, the “vili-fied substance,” and coca, an “innocuous natural plant.”²⁷ There is less than 1 percent cocaine alkaloid in a coca leaf.²⁸ Some who use cocaine might believe that it is just coca in a more convenient and potent form. As a result, “the evils which have followed [cocaine’s] use have fallen upon coca, which has often been erroneously condemned as the cause.”²⁹ The strength-giving, rejuvenating, and purifying properties of coca, aside from slight effect on the central nervous system, come from associate alkaloids present in the plant, not the cocaine alkaloid.³⁰ The physical effects of coca completely differ from that of cocaine.³¹ In fact, the Andean Indians actually preferred coca leaves that were low in cocaine, as it made the coca leaf taste bitter.³² Coca, while a restorative and sustaining substance to the body, does not “fill[] minds with that ecstatic and dreamful bliss,” resulting in the debilitating effects that hallucinogens and other dangerous narcotic drugs often cause.³³ Throughout the long centuries in the history of coca and before cocaine was even discovered, there has not been a single known case of poisoning from coca.³⁴ One Swiss writer, who visited South America in the 1800s and was once frequently and popularly quoted regarding coca, concluded that “Coca is not merely innocuous, but . . . it may even be very conducive to health.”³⁵ He continued to testify to the longevity of the Indians, who, from almost the age of boyhood, consume coca multiple times a day, “yet nevertheless enjoy perfect health.”³⁶ Another scholar of Incan customs and the affairs of

25. 2007 WORLD REPORT, *supra* note 9, at 218.

26. *Id.* at 64.

27. Joyce Gregory Wyels, *The Cocoa Crux: It Has a Long History of Traditional and Medicinal Uses, and the Backing of Bolivia's Head of State, but Can Coca Exist Without Cocaine?*, AM. MAG., Nov. 1, 2006, at 18, available at http://www.americas.oas.org/dec06_art26.htm. There were reports, however, in late 2004 of a new “super coca” plant in the jungles of Colombia that could yield more cocaine. See, e.g., Dan Molinski, *New Coca Plant Grows Faster, Kicks Harder*, COM. APPEAL, Sept. 5, 2004, at A12, available at “2004 WLNR 9639423” on Westlaw.

28. Wyels, *supra* note 27.

29. W. GOLDEN MORTIMER, PERU: HISTORY OF COCA “THE DIVINE PLANT” OF THE INCAS 16-17 (J.H. Vail & Co.) (1901).

30. *Id.* at 425.

31. *Id.* at 13.

32. BOVILLE, *supra* note 1, at 35.

33. MORTIMER, *supra* note 29, at 22.

34. *Id.* at 18, 430.

35. *Id.* at 172.

36. *Id.*

Peru wrote, "of all the narcotics used by man Coca is the least injurious and the most soothing and invigorating."³⁷ While substances such as cocaine and even coffee leave behind bodily waste, coca helps to rid the blood stream of such waste.³⁸ Stimulants that ultimately agitate or depress differ from coca and its tranquilizing effects.³⁹ Furthermore, coca is not habit-forming.⁴⁰ Force product is a constant factor: the amount of coca needed to sustain a fifteen-year old is the same as that needed for a sixty-year old, such that "an increasing dose is not resorted to."⁴¹ There is not a single documented case of "chronic cocaism."⁴²

C. EVOLUTION OF COCA AND ITS IMPORTANCE TO THE CULTURE OF PERU

The coca plant has played a significant role in Andean society for centuries. In fact, archaeological findings show that coca has been used in Peru for over 4,000 years.⁴³ During the early times, the Incas (who were then the dominant people of the northern area of South America) regarded the coca shrub as "the divine plant."⁴⁴ Originally, coca was used exclusively by the royal family: "The sovereign could show no higher mark of esteem than to bestow a gift of this precious leaf upon those whom he wished to endow with an especial mark of his imperial favor."⁴⁵ When the Incas took over indigenous tribes of the area, the conquered chiefs were welcomed into the Incan tribe with gifts including coca.⁴⁶ The Spanish invasion of Peru in the 1500s destroyed most native records, so it has been challenging to fully retrace a continued history of Peru's early civilization.⁴⁷ But we do know that coca was highly esteemed by the Indians of that region from accounts of attacks on its use during the period of oppression by the Spanish. The natives cherished coca even more than gold or silver.⁴⁸ Don Francisco de Toledo, a Spanish man who became a viceroy of Peru, seemed "determined to stamp out all Incan traditions, and to change completely the habits of the natives in conformity with his own ideas."⁴⁹ These prejudices included judgments about the Incan culture surrounding the coca plant: "[T]he Coca plant so prized by the Indians was deemed by the Spanish unworthy of serious consideration . . . it was looked upon by them merely as a savage means of intoxication, or at best a mere source of idle indulgence among a race they so much de-

37. *Id.* at 176.

38. *Id.* at 225, 369, 425.

39. *Id.* at 398.

40. *Id.* at 430.

41. *Id.* at 20, 22.

42. *Id.* at 20.

43. GAGLIANO, *supra* note 4, at 14.

44. MORTIMER, *supra* note 29, at 7.

45. *Id.* at 151-52.

46. *Id.*

47. *Id.* at 24.

48. GAGLIANO, *supra* note 4, at 23.

49. MORTIMER, *supra* note 29, at 107.

spised.”⁵⁰ During Toledo’s rule, there were about seventy ordinances issued concerning coca,⁵¹ regulating everything from coca cultivation and related labor practices to its use.⁵² But in the end, coca was officially tolerated because the Spanish ultimately came to see its use as a matter of necessity rather than of gluttony.⁵³ So coca survived persecution, and from that time, it has been “frequently sung in poetry or recounted in the tales of travellers [sic].”⁵⁴

The first coca plantation was located in Havisca on the montaña on the eastern base of the Andes.⁵⁵ Traditional consumption areas, the high plateaus, are not surprisingly linked in proximity to those areas where the appropriate conditions exist for growing coca.⁵⁶ Initially, the ideal land-types for cultivation were high tropical forests (altitudes of 1,500 to 4,500 feet) and slopes greater than thirty degrees, which allow for proper drainage of the soil.⁵⁷ These areas provide a uniform temperature, as they are located above the extreme heat of the valleys that can dry out the plant—although at too great an altitude, the plant only develops small leaves of little or no marketable value.⁵⁸ These areas also provide a humid atmosphere, created by frequent rain, in which the fog blocks the intense, tropical sun.⁵⁹ Ideal humidity levels range from 80 to 90 percent.⁶⁰ But coca shows “resilience in a marginal environment” with the capacity to survive in various conditions affecting altitude, climate, and soil.⁶¹ In fact, the coca plant can grow in red clay, which is common in the tropics of the Andes.⁶² Seedlings can be planted year-around, but most are planted during the first quarter of the annual calendar (the rainy season), yielding the first crop within two to three years.⁶³ Coca can be harvested four to six times per year with a lifespan of up to forty years (although best productivity is during the first fifteen).⁶⁴ Each shrub yields an average of four ounces of leaves,⁶⁵ which can be stored for several years if preserved

50. *Id.* at 150.

51. *Id.* at 107.

52. GAGLIANO, *supra* note 4, at 60, 62.

53. MORTIMER, *supra* note 29, at 108.

54. *Id.* at 24.

55. *Id.* at 158-59.

56. U.N. OFFICE FOR DRUG CONTROL & CRIME PREVENTION, ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA: THE UNDCP EXPERIENCE at 13, U.N. Sales No. E.01.X1.4 (2001), available at http://www.unodc.org/pdf/publications/alt-development_andean.pdf [hereinafter ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA].

57. *Id.*

58. MORTIMER, *supra* note 29, at 235.

59. *Id.* at 237.

60. GAGLIANO, *supra* note 4, at 4.

61. David Mansfield, *Alternative Development: The Modern Thrust of Supply Side Policy*, in 51 UNODC BULLETIN ON NARCOTICS (Nos. 1 & 2) 19, 20 (1999), available at http://www.unodc.org/pdf/bulletin_1999-01-01_1.pdf.

62. MORTIMER, *supra* note 29, at 235.

63. GAGLIANO, *supra* note 4, at 4-5.

64. Mansfield, *supra* note 61.

65. MORTIMER, *supra* note 29, at 270.

with proper care.⁶⁶

1. *A Practical Purpose: Sustenance and Energy*

A supreme practical utility of the coca leaf, by all accounts, stems from its sustaining and rejuvenating effects. The Andeans especially relied on it to survive famine and harsh working conditions. Without coca, those who worked in Peruvian mines could not perform their tasks under the exposure to which they were subjected, including high altitudes, mental dejection of slavery, and lack of sufficient food for the muscular tasks at hand.⁶⁷ In fact, coca leaves were distributed on a daily basis to laborers as a regular portion of their wages.⁶⁸ Accounts even tell of the Peruvian army's use of coca to get rid of hunger and fatigue when provisions ran short.⁶⁹ Coca was also considered a "necessity to the Andean in his toilsome travels."⁷⁰ An Andean could measure the distance he traveled by the amount of coca chewed.⁷¹ In fact, *cocada* is a coca term that "became widely accepted as a unit to measure distance."⁷²

Physiologically, the coca leaves help sustain and rejuvenate the body by aiding in respiration, stimulating the muscle fiber of the heart, and purifying the bloodstream.⁷³ Increasing these bodily functions helps overcome nutritional and climatic difficulties. In fact, even modern-day visitors to areas such as Cusco and Machu Picchu are offered coca tea at airports, hotels, restaurants, and tourist sites to help subside the effects of *soroche* (altitude sickness). Coca gives force to the respiration cycle, deepening each breath to allow more oxygen to enter the system.⁷⁴ Nitrogen stored in the leaves of coca converts carbohydrates into proteins and thus energy.⁷⁵ And coca helps circulation by freeing the blood stream of waste.⁷⁶ Furthermore, coca is filled with nutrients, vitamins, and minerals.⁷⁷ For example, one hundred grams of coca leaf contain over 300 calories and almost 1,800 milligrams of calcium.⁷⁸

2. *Religious and Ritualistic Uses*

The coca leaf was also intimately linked to Peruvian religious life. At one time, the clergy took a tax on coca crops, such that tithes of coca leaves formed a major part of church revenue.⁷⁹ The religion of the Incas

66. *Id.* at 276.

67. *Id.* at 22, 157.

68. GAGLIANO, *supra* note 4, at 96.

69. MORTIMER, *supra* note 29, at 167.

70. *Id.* at 24.

71. *Id.* at 22.

72. GAGLIANO, *supra* note 4, at 95.

73. MORTIMER, *supra* note 29, at 171, 222, 371.

74. *Id.* at 410.

75. *Id.* at 326, 369.

76. *Id.* at 371.

77. BOVILLE, *supra* note 1, at 56.

78. *Id.* at 57.

79. MORTIMER, *supra* note 29, at 160.

can in part be characterized as “the worship of the sun.”⁸⁰ Just as the sun provides light, heat, and life, the Andeans in similar spirit recognized coca as a divine source of power and strength.⁸¹ In the Andes, coca is deemed “to be the medium between man and the supernatural.”⁸² Coca leaves were and still are often integral to various ceremonies. The Incas made coca offerings to the dead, believing that the deceased’s soul would be “fed and sustained through [coca’s] emblem of strength.”⁸³ They also believed that “if a dying man can appreciate the taste of Coca leaves pressed to his lips his soul will enter Paradise.”⁸⁴ The ceremony of the knighthood involved giving each knight a sack of coca leaves, symbolizing the manhood that the coca would maintain.⁸⁵ These young knights, devoted to athletic training, would only receive the leaves upon proving themselves worthy by exhibiting their endurance.⁸⁶ Even today, upon building new houses, Peruvian Indians place coca leaves in the house’s foundation to ensure its dwellers “good fortune and protect them from evil spirits.”⁸⁷ Travelers also use the leaves as an offering to the spirits controlling the mountains to protect them on their journeys.⁸⁸ Similarly, miners offer leaves to the deities believed to control the mines from which workers are trying to extract ore, and it is thought that the sicknesses and accidents sometimes resulting from such work are the product of those spirits when angered.⁸⁹

3. Medicinal Needs

Historical accounts document uses of the coca plant as aids to the body in the face of various ailments and illnesses. In the Andean region, coca has been “an essential element in the family medicine chest.”⁹⁰ The coca leaf is used for medicinal purposes in some form by over 80 percent of the rural Andean population.⁹¹ Common ailments fought with coca include: headaches and migraines, colds, toothaches, throat problems, altitude sickness, wounds, contusions, sores, broken bones, stomach and intestinal problems including diarrhea and more serious digestive disorders, anemia, rheumatism, neurasthenia (nerve and muscle depression), and sexual impotence.⁹² Doctors in colonial Lima also prescribed coca for addiction to opium and heroin as well as mental disorders such as depression, dys-

80. *Id.* at 55.

81. *Id.* at 56, 73.

82. EDMUNDO MORALES, COCAINE: WHITE GOLD RUSH IN PERU 15 (Univ. of Ariz. Press) (1989).

83. MORTIMER, *supra* note 29, at 69.

84. *Id.* at 73.

85. *Id.* at 72.

86. *Id.* at 348.

87. GAGLIANO, *supra* note 4, at 9.

88. *Id.*

89. *Id.*

90. BOVILLE, *supra* note 1, at 40.

91. Lloyd R. Lewis III, *Peru, Coca Trade, and Environment*, 8 TED CASE STUDIES (Issue No. 1) (Jan. 1998), <http://www.american.edu/TED/perucoca.htm>.

92. BOVILLE, *supra* note 1; GAGLIANO, *supra* note 4; MORTIMER, *supra* note 29.

pepsia, nervous fatigue, hysteria, and hypochondriasis.⁹³ And there are more than fifty-five natural products derived from the coca leaf, which can be used for cures for cancer, Parkinson's disease, senile dementia, alcoholism, depression, and kidney and liver deficiencies.⁹⁴ To ingest, the leaves can either be chewed or put in tea.⁹⁵ Due to coca's effect on the muscular system, it can even act as a regulator of the heart, strengthening the organ if it is weak, calming it if it is over-active, and normalizing it if it is irregular—making coca a “direct cardiac tonic.”⁹⁶ In addition to acting as a remedy, coca can serve a preventative function, for example, to help avoid seasickness.⁹⁷ Interestingly, coca has direct effects on the membrane of the vocal cords (it improves quality of the voice and sustains tone), and it was, at least at one time, widely used by professional singers and speakers as a throat tonic.⁹⁸ But its use wasn't limited to locals. Travelers to Peru in the 1800s promoted its use in Europe and the United States as a “miracle drug.”⁹⁹

4. Social Consumption

Coca has also played a role in everyday social and economic life. Coca leaves are often carried around in pouches called *chuspas* that fit around the waist.¹⁰⁰ One of the oldest customs involving the coca plant is the regular chewing of its leaves—on work breaks, in the fields, or while traveling.¹⁰¹ “People, when they care about each other, know how to offer a chew.”¹⁰² Eight million people in the Andes regularly chew coca leaves or drink coca tea.¹⁰³ Records illustrate coca as a symbol of camaraderie, “the expression and maintenance of social relations.”¹⁰⁴ Hosts extend hospitality by giving the leaves to guests; leaders give them to helpers before work; leaves even serve to bind parties to agreements, signifying good faith.¹⁰⁵ Leaves have also served an economic use by representing a “basic medium of exchange in transactions” between the natives.¹⁰⁶ Fishermen sometimes use it on the end of their hooks as bait.¹⁰⁷ Despite years of history, however, coca's notoriety as a raw material for cocaine has “eclipsed its cultural roots, leading to criminalisation [sic] and

93. BOVILLE, *supra* note 1; GAGLIANO, *supra* note 4; MORTIMER, *supra* note 29.

94. BOVILLE, *supra* note 1, at 56.

95. GAGLIANO, *supra* note 4, at 91.

96. MORTIMER, *supra* note 29, at 409.

97. *Id.* at 428.

98. *Id.* at 80-81, 452.

99. GAGLIANO, *supra* note 4, at 91, 98.

100. MORTIMER, *supra* note 29, at 196.

101. MORALES, *supra* note 82, at 13.

102. BOVILLE, *supra* note 1, at 39.

103. *Living on Earth: Growing Coca in the Rainforest* (Public Radio International Aug. 30, 1996) (transcript available at <http://www.livingonearth.org/shows/shows.htm?programID=96-P13-00035#feature1>) [hereinafter *Living on Earth*].

104. MORALES, *supra* note 82, at 15.

105. GAGLIANO, *supra* note 4, at 9.

106. *Id.* at 95.

107. MORTIMER, *supra* note 29, at 168.

stigmatisation [sic]."¹⁰⁸

D. FROM COCA TO COCAINE

The Enlightenment of the eighteenth century brought much interest in the coca bush to Europe.¹⁰⁹ But it was not until 1859 that the alkaloid cocaine was first isolated from coca leaves by Dr. Albert Niemann, a German chemist.¹¹⁰ In 1884, Dr. Carl Koller was credited for discovering cocaine's use as an anesthetic in eye surgery.¹¹¹ Of note, however, is the fact that Sigmund Freud is now known to have conducted his own experiments on the numbing effects of cocaine by injecting it into frogs and observing that it paralyzed their sensory nerves.¹¹² Freud announced that the use of cocaine in eye surgery was feasible, but he did not receive much recognition for this conclusion.¹¹³ It was later that year that Koller published his similar findings, and although he acknowledged Freud's role in stimulating interest in the area, he did not recognize Freud's significant research, and thus Koller received sole credit for discovering cocaine's use as a local anesthetic.¹¹⁴ The following year, doctors began experimenting with cocaine as a general anesthetic by injecting it into the spinal cord.¹¹⁵ Cocaine soon became widely accessible at the hand of pharmaceutical companies, such as Merck.¹¹⁶

As previously stated, it is important to recognize that coca is not cocaine. Cocaine is the "end product of processing coca, just as whiskey comes from barley, or wine from grapes."¹¹⁷ Coca leaves must undergo a complex process involving several chemicals, solvents, and equipment.¹¹⁸ The production of coca paste involves an estimated 30,000 tons of sulphuric acid, 2,000 tons of calcium carbonate, and fifty million liters of kerosene.¹¹⁹ Obtaining mass chemicals generates more smuggling, "which creates new sets of social interrelationships, each of which adds to the value of the final product."¹²⁰ From the final processing to the time of consumption, the value of cocaine increases seven-fold.¹²¹

108. Milagros Salazar, *Cocaleros Carve a Niche in Congress*, INTER PRESS SERVICE NEWS AGENCY, July 24, 2006, <http://ipsnews.net/news.asp?idnews=34083>, available at "7/24/06 INTERPRENG 00:00:00" ON WESTLAW [hereinafter Salazar, *Cocaleros Carve*].

109. BOVILLE, *supra* note 1, at 41.

110. *Id.* at 41; MORTIMER, *supra* note 29, at 16, 296.

111. MORTIMER, *supra* note 29, at 17, 182, 412.

112. GAGLIANO, *supra* note 4, at 109-10.

113. *Id.* at 110.

114. *Id.*

115. MORTIMER, *supra* note 29, at 419.

116. Lewis, *supra* note 91.

117. Cook, *supra* note 3, at 59.

118. Wyels, *supra* note 27.

119. U.N. Office on Drugs & Crime, *Drugs and Development* 6 (June 1994) (discussion paper prepared for the World Summit on Social Development), available at http://www.unodc.org/pdf/Alternative%20Development/Drugs_Development.pdf [hereinafter *Drugs and Development*].

120. MORALES, *supra* note 82, at 67.

121. BOVILLE, *supra* note 1, at 88.

The process of converting coca to cocaine often takes place in laboratories and mini-factories¹²² but can also be done by the farmers themselves in less formal jungle “kitchens” close to where the coca is grown.¹²³ First, during stage one, the coca leaves must be picked and dried, then mixed with sulfuric acid, then stomped, then mixed with kerosene, diesel fuel, and calcium oxide, then mixed with sodium carbonate—a procedure that yields cocaine paste.¹²⁴ The preparation of the coca paste takes from four to five days.¹²⁵ At this point in the process, the paste is sometimes sold to Columbian or Mexican middle men who create the final product.¹²⁶ Otherwise, during stage two, the purification stage, the resulting paste is washed in kerosene, then dissolved in sulfuric acid, then mixed with potassium permanganate and ammonium hydroxide—a procedure that yields cocaine base.¹²⁷ Finally, during stage three, the base is dissolved in acetone and water, then heated, then mixed with ether, then mixed with hydrochloric acid, which precipitates the cocaine crystals—a procedure that yields cocaine hydrochloride, the technical name for cocaine.¹²⁸ Thus, cocaine is formed only after performing a highly-involved process using complex equipment and rare chemical reagents that convert coca leaves into cocaine paste, then into cocaine base, and ultimately into a pure form of cocaine. This process destroys 98 percent of the coca leaf’s contents, making cocaine a very different product—chemically, physically, and metaphysically—from coca.¹²⁹

III. A STATE OF ILLICIT AFFAIRS: COCA AND COCAINE IN PERU TODAY

The modern coca business “forms the chief industry of a large portion of the natives and a prominent source of revenue to the governments controlling the localities where it is grown.”¹³⁰ Empresa Nacional de la Coca (ENACO) is the Peruvian state-run agency for the legitimate trade and merchandising of coca.¹³¹ It is responsible, in part, for the collection of taxes from the legal coca trade.¹³² Each year, ENACO buys approximately five thousand of the nine thousand tons of coca leaf earmarked for traditional usage—such as for chewing and coca teas—and other legal purposes.¹³³ Such licit purposes include selling the coca to Peruvian pri-

122. Melvyn Levitsky, *Transnational Criminal Networks and International Security*, 30 SYRACUSE J. INT’L L. & COM. 227, 228 (2003).

123. BOVILLE, *supra* note 1, at 77.

124. Cook, *supra* note 3, at 59.

125. MORALES, *supra* note 82, at 71.

126. BOVILLE, *supra* note 1, at 77.

127. Cook, *supra* note 3, at 59.

128. *Id.* at 59-60.

129. The Coca Museum, *Coca Leaves: Fisiology*, <http://www.cocamuseum.com/htm/fisiology.htm> (last visited Feb. 5, 2008).

130. MORTIMER, *supra* note 29, at 7.

131. Wyels, *supra* note 27. The ENACO website is <http://www.enaco.com.pe/>.

132. MORALES, *supra* note 82, at 47.

133. Latin American Special Reports, *Zero Cocaine, Not Zero Coca*, LATINNEWS.COM, July 11, 2006, <http://www.latinnews.com/> [hereinafter *Zero Cocaine*].

vate or foreign companies who use the product in foods, drinks, and household items such as soap and candles.¹³⁴ Specifically, the Coca Shop in Cusco, Peru uses coca in cookies, pastries, and ice cream.¹³⁵ Coca is also reportedly used in flour, tea, tamales, pies, and even lemonade.¹³⁶ President Alan Garcia of Peru has even mentioned that several coca-based dishes have been served at the Government Palace, and he underscored the notion that coca has “good nutritional value,” adding that it can be eaten directly in salad.¹³⁷ There are over fifty industrial products derived from coca.¹³⁸ ENACO has exported coca to The Coca-Cola Company in New Jersey, to be used as an extract of the coca leaf as one of the secret ingredients in its soda beverage.¹³⁹ Coca-Cola is the only company in the United States that has had rights to legally import coca leaves.¹⁴⁰ ENACO also exports coca to countries such as Belgium and Japan, whose pharmaceutical industries use the product for medicinal purposes, such as anesthetics.¹⁴¹

But drug traffickers can pay coca growers nearly four times the price that ENACO can offer.¹⁴² As a result, the farming of coca “went from a cultural artifact to the best-paying industry in Peru.”¹⁴³ Specifically, drug traffickers offer five dollars per kilo of coca leaf, while ENACO pays approximately only \$1.40 per kilo.¹⁴⁴ This difference means much to coca growers, given the poverty that faces Peru. Over 40 percent of the population makes less than two dollars per day.¹⁴⁵ 70 percent of the farmers in coca cultivation zones face poverty.¹⁴⁶ The unemployment rate is just

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134. Jimmy Langman, *Just Say Coca—Andean Entrepreneurs are Pushing Coca Beyond Cola*, in *New Teas, Toothpaste, Shampoo, Liquor and More*, NEWSWEEK, Oct. 30, 2006, at E22, available at <http://www.msnbc.msn.com/id/15359301/site/newsweek/>.
 135. Bolivia’s “Coca, Yes, Cocaine No” Policy is Beginning to Work, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Feb. 23, 2007, available at http://stopthedrugwar.org/chronicle/474/bolivia_coca_yes_cocaine_no_policy_beginning_to_work.
 136. *In Peru, Coca Growers Struggle to Survive*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Feb. 16, 2007, available at http://stopthedrugwar.org/chronicle/473/in_peru_coca_growers_struggle_to_survive [hereinafter *Coca Growers Struggle*].
 137. *Peruvian President Lauds Coca Leaf in Salad, Blasts Guerrillas*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Dec. 22, 2006, available at http://stopthedrugwar.org/chronicle/466/peru_president_lauds_coca_salads_blasts_guerrillas [hereinafter *President Lauds*].
 138. BOVILLE, *supra* note 1, at 60.
 139. Langman, *supra* note 134.
 140. BOVILLE, *supra* note 1, at 61.
 141. Langman, *supra* note 134.
 142. *Zero Cocaine*, *supra* note 133.
 143. MORALES, *supra* note 82, at xvi.
 144. *Zero Cocaine*, *supra* note 133.
 145. Isaias Rojas, *Peru: Drug Control Policy, Human Rights, and Democracy*, in *DRUGS AND DEMOCRACY IN LATIN AMERICA: THE IMPACT OF U.S. POLICY* 185, 186 (Coletta A. Youngers & Eileen Rosin eds., Lynne Rienner Publishers) (2005).
 146. U.N. OFFICE ON DRUGS & CRIME, *ALTERNATIVE DEVELOPMENT: A GLOBAL THEMATIC EVALUATION* at v, U.N. Sales No. E.05.XI.13 (2005), available at http://www.unodc.org/pdf/Alternative_Development_Evaluation_Dec-05.pdf [hereinafter *GLOBAL THEMATIC EVALUATION*].

under 10 percent, with underemployment at over 50 percent.¹⁴⁷ Many peasants in the smaller villages live in "what are essentially shanties without electricity or running water."¹⁴⁸ Recent increased demand for cocaine—sometimes known as "white gold"¹⁴⁹—is another factor that has led growers to replant abandoned coca fields.¹⁵⁰ Therefore, illicit cocaine production has become a driving force for most of Peru's coca production. In fact, 80 to 90 percent of the coca harvests in Peru are used for cocaine manufacturing.¹⁵¹ There are reports that even some of the coca distributed by ENACO ends up in illegitimate enterprise, as a legal retailer can also be distributing the leaves to the underground market or manufacturing coca-paste himself for distribution.¹⁵² A retailer will even display coca of inferior quality on purpose so that a customer will buy his leaves from another store, leaving more on which the first retailer can profit from the black market.¹⁵³ Thus, the growing and trade of coca, whether for legitimate purposes or not, has become "one of the hottest sectors of Peru's moribound economy."¹⁵⁴

A. IMPACT OF THE COCA AND COCAINE TRADES ON PERU

There are serious repercussions to the emergence of the illicit coca trade in Peru, such as consequences on the environment and the emergence of corruption. Both situations produce damaging cycles that are hard to reverse once in full force.

1. *Environment*

Consequences to the environment are multi-fold. First, as the hunger to grow more coca for profit increases, forests are cleared, which some feel is "the main reason for the environmental degradation of the Amazon region."¹⁵⁵ Some experts estimate that since the 1970s, forest burning to make room for coca fields has cost the Andean region fifteen million acres of jungle.¹⁵⁶ And the problem only increases as eradication pushes those determined to keep growing coca to more remote areas,

147. Bureau of Western Hemisphere Affairs, U.S. Department of State, *Background Note: Peru* (2006), <http://www.state.gov/r/pa/ei/bgn/35762.htm> [hereinafter *Background Note*].

148. *Coca Growers Struggle*, *supra* note 136.

149. MORALES, *supra* note 82, at 48.

150. Patrick J. McDonnell, *Peru Grapples with Growing Drug Trade*, LOS ANGELES TIMES, Aug. 23, 2006, at 8.

151. Xinhua News Agency, *Andean Community Reiterates Commitment to Fighting Drug Trafficking*, REDORBIT.COM, Feb. 15, 2006, available at www.redorbit.com/news/health/392170/andean_community_reiterates_commitment_to_fighting_drug_trafficking/index.html, available at "2/15/06 XINHUAEN 02:50:35" ON WESTLAW.

152. MORALES, *supra* note 82, at 63-64.

153. *Id.* at 64.

154. *Pro-Coca Upstart Poised to Win First Round of Peruvian Presidential Election*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Apr. 7, 2006, available at <http://stopthedrugwar.org/chronicle-old/430/peru.shtml>.

155. BOVILLE, *supra* note 1, at 69.

156. *Living on Earth*, *supra* note 103.

destroying lowland rainforest.¹⁵⁷ Furthermore, upland deforestation eliminates trees that would normally catch rainwater, leading to flooding and mudslides.¹⁵⁸ Second, coca plants exhaust nutrients from the soil as well as disturb the natural soil replenishment cycle, and when plants are uprooted, the fields become useless for several years.¹⁵⁹ Finally, the process of preparing cocaine from coca leaves (using chemicals such as sulfuric acid, kerosene, and ammonia) creates toxic waste, and at the end of a preparation cycle, thousands of gallons of polluted water are dumped into streams and rivers, contaminating fresh water sources and killing plant and animal life.¹⁶⁰ But between participating in the coca industry or living in extreme poverty or worse, many growers conclude that "survival comes before the environment."¹⁶¹

2. Corruption

The multibillion-dollar drug trade industry has given rise to corruption at all levels of society and government. Ironically, sometimes those "who benefit the most economically from the cocaine trade are those charged with fighting it."¹⁶² In other words, the law enforcement officers who regularly observe routes typically used by drug organizations are the ones who have the opportunity to strike deals with those traffickers.¹⁶³ Low salaries for law enforcement leave them particularly vulnerable to such deals.¹⁶⁴ According to the 2005 Transparency International Global Corruption Barometer, corruption in Peru affects more than 70 percent of political life.¹⁶⁵ Sometimes government officials "find themselves caught in a dilemma between looking the other way in order to finance governmental expenditures and enforcing laws against drug trafficking."¹⁶⁶ This corruption is no secret among the public. On a scale of zero to ten, where zero represents more and ten represents less, public perception of corruption among public officials and politicians ranks at almost a four.¹⁶⁷

B. COCALERO MOVEMENT: THE VOICE OF THE FAMILY FARMER

Approximately 45,000 families in Peru make their living from, or are at least involved in, growing coca.¹⁶⁸ The fact that the country has adopted an eradication policy, much to the pleasure of the United States, has frustrated and angered Peru's coca growers. The current law on coca eradica-

157. *Id.*

158. Lewis, *supra* note 91.

159. MORALES, *supra* note 82, at 156.

160. *Id.* at 77.

161. *Living on Earth*, *supra* note 103.

162. MORALES, *supra* note 82, at xix.

163. *Id.*

164. *Drugs and Development*, *supra* note 119, at 13.

165. TRANSPARENCY INT'L, 2005 REPORT ON THE TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION BAROMETER 7 (2005).

166. *Drugs and Development*, *supra* note 119, at 13.

167. Rojas, *supra* note 145, at 186.

168. 2006 INCSR, *supra* note 24, at 116.

tion in Peru “leaves very little margin for indigenous people and small farmers to legally plant their traditional Andean crop.”¹⁶⁹ Any success in the eradication of coca fields, crop substitution, and law enforcement interdiction is met by the increasingly active cocalero associations that “link coca cultivation to issues of cultural identity and national pride”:

These farmer’s unions, often exploited by trafficking interests, glorify coca cultivation and consumption as ancient and sacred indigenous traditions that must be protected against international efforts to destroy them. They portray coca reduction programs as a means for a mainly white, urban governing minority to limit the economic advancement of a rural indigenous majority.¹⁷⁰

Coca grower unions include, among others, the National Confederation of Agricultural Producers of the Coca Valleys (CONCPACCP), the Confederation of Coca Leaf Producers, and the Federation of Agriculture Producers of the Valleys of the Apurimac and Ene Rivers (VRAE). In late 2000, highways were blocked for a week while about 35,000 farmers in the Upper Huallaga Valley rose up in protest.¹⁷¹ In mid 2002, another strike in the Peruvian city of Ayacucho actually caused the Peruvian government to back off on eradication efforts in a major coca-growing region when 7,000 farmers marched over ninety miles to protest.¹⁷² In mid 2005, a combined 150,000 in Peru’s central valleys initiated a strike to defend coca growing.¹⁷³ Coca farmers, most of whom live in extreme poverty, argue that law enforcement eradication efforts wipe out their livelihood without viable alternatives, and that only 10 to 15 percent of the resources from alternative development projects actually reach them.¹⁷⁴ Cocaleros contend that they are “honest, hard-working Peruvians . . . not guilty of anything,” but they do “acknowledge off the record that the leaves not bought by ENACO are destined for the black market.”¹⁷⁵

Cocaleros are not helpless in their plight. Their movement was strengthened when some of their leaders were elected to Peru’s national legislature in 2006, including Elsa Malpartida and Nancy Obregón.¹⁷⁶ They also co-founded an indigenous political party called Kuska Perú.¹⁷⁷ These leaders use their political access to lobby the government to focus

169. Páez, *supra* note 22.

170. 2006 INCSR, *supra* note 24, at 11.

171. *Peru’s Fujimori and Coca Eradication Gone, Colombia’s Peace Talks on Hold as Country Braces for Drug War*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/ DRCNet, Washington, D.C.), Nov. 24, 2000, available at <http://stopthedrugwar.org/chronicle-old/161/andeanupdate.shtml>.

172. *Peru Backs Off on Coca Eradication, Again*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Aug. 8, 2002, available at <http://stopthedrugwar.org/chronicle-old/249/perucoca.shtml>.

173. *Coca on the March*, *supra* note 14.

174. *Coca Growers Struggle*, *supra* note 136.

175. *Id.*

176. Latin American Weekly Report, *Opposition-to-be Makes a Noisy Debut*, LATIN NEWS.COM, July 4, 2006, <http://www.latinnews.com/> [hereinafter *Opposition*].

177. *Id.*

on drug trafficking through law enforcement rather than eradication, arguing that poverty-stricken coca growers "would always cultivate the plant."¹⁷⁸ Despite this political stature, however, their "reputations as radical militants [have been] enhanced by legal action against them."¹⁷⁹ Both women have been arrested for "disturbing the public order" by leading strikes that became violent and publicly defending the commission of crimes.¹⁸⁰ (Obregón's three-year prison term was suspended, and Malpartida's sentence was overturned on appeal.¹⁸¹) Many argue that these arrests are "criminalizing the social movements, at a time in which both the state and the failed war on drugs are facing major setbacks."¹⁸²

IV. EFFECTS OF ECONOMIC LIBERALIZATION ON DRUG TRAFFICKING

Illicit drug trade organizations operate similarly to that of any business, especially in recent decades: "[I]t has a defined social organization, employs many people, operates on a credit system reinforced by rules and regulations, has policies of protection and, most important, has as its ultimate goal the accumulation of wealth."¹⁸³ Furthermore, the complexity of these organizations are comparable to that of multinational corporations: "The relatively simple charts of drug flows . . . now resemble schematic drawings of intricate . . . networks tying nearly every country in the world to the . . . drug production and trafficking countries."¹⁸⁴ The North American Free Trade Agreement (NAFTA), which established free trade between Mexico, the United States, and Canada, has arguably had the unintended effect of allowing drug traffickers a mechanism through which to further their illicit activity undetected.¹⁸⁵ Although Peru is not a party to this agreement, there have been several reports that Mexican drug cartels have taken root in South America, specifically Peru, and that these organizations funnel cocaine and other drugs from Peru through Mexico and into the United States.¹⁸⁶

178. Latinnews Daily, *Coca-leader Insists New Drug Policy is Necessary*, LATINNEWS.COM, Sept. 27, 2006, <http://www.latinnews.com/ld/LD2269.asp> [hereinafter *Coca-leader Insists*].

179. *Opposition*, *supra* note 176.

180. Luis Gomez, *Coca Growers' Leader Nancy Obregón Arrested in Peru*, THE NARCOSPHERE, Dec. 16, 2005, <http://narcosphere.narconews.com/story/2005/12/16/181247/58>.

181. *Opposition*, *supra* note 176.

182. Gomez, *supra* note 180.

183. MORALES, *supra* note 82, at 164.

184. Thomas, *supra* note 2, at 554.

185. See Joe Swanson, *Drug Trafficking in the Americas: Reforming United States Trade Policy*, 38 GEO. WASH. INT'L L. REV. 779, 785 (2006); Taylor W. French, *Free Trade and Illegal Drugs: Will NAFTA Transform the United States into the Netherlands?*, 38 VAND. J. TRANSNAT'L L. 501, 535-36 (2005).

186. See, e.g., Alfredo Corchado, *Mexican Drug Cartels Move into Peru*, DALLAS MORNING NEWS, Jan. 8, 2007, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/010708dnintlperucartels.3323e00.html>.

A. THE NORTH AMERICAN FREE TRADE AGREEMENT

NAFTA has been “demonstrably linked to emerging patterns in illicit trafficking.”¹⁸⁷ By eliminating tariffs, the free trade agreement increases the capacity of member states to acquire access to each other’s markets.¹⁸⁸ Several factors result from NAFTA that aid in the facilitation of drug trafficking: 1) lowered cost of products; 2) improvement of transportation routes; 3) increased trade volume; 4) limitation of states’ inspection abilities; and 5) enablement of easier money laundering.¹⁸⁹ Basically, it becomes cheaper and easier to import drugs and harder for the states to control the activity. Modern drug traffickers “take advantage of NAFTA’s borderless society” by setting up their organizations to mimic legitimate businesses, using such illusions as fronts for their illegal activities.¹⁹⁰ These groups are becoming increasingly difficult for law enforcement to detect, as the traffickers engage in seemingly-harmless activities of trucking, shipping, railway, and storage—activities related to both legitimate and illicit trade.¹⁹¹ Moreover, modern cartels are organized in small cells, each capable of independent operation, such that if one is destroyed, it merely severs a limb off the beast.¹⁹² And from the shadowy boss to the local delivery agents, “the members of this hierarchy live by a code of loyalty, silence, and quick punishment for those who do not cooperate,” making it even harder to penetrate this underground network.¹⁹³

B. DRUG TRAFFICKING IN PERU AND RELATED VIOLENCE

Peru is not a party to NAFTA, but Mexican drug cartels have “spread their powerful tentacles deep into th[e] Andean nation,” taking advantage of the liberalization of free trade in the Americas to bring cocaine originating from Peru into the United States.¹⁹⁴ U.S. and Peruvian authorities state that these drug mafias are setting up state-of-the-art processing labs inside Peruvian territory and shipping cocaine into the United States via Mexico.¹⁹⁵ Peruvian police state that five of Mexico’s drug cartels run operations in Peru, in addition to other cartels.¹⁹⁶ The influx of cartels from Mexico has channeled millions into the Peruvian cocaine market, causing the industry to reach “unprecedented levels.”¹⁹⁷ During 2005-2006, about thirty-five Mexican cartel members were arrested in Peru.¹⁹⁸ A huge victory for law enforcement also came in No-

187. *Drugs and Development*, *supra* note 119, at 11.

188. French, *supra* note 185, at 527.

189. *Id.* at 534-36.

190. *Id.* at 529-30.

191. *Id.* at 529.

192. *Id.*

193. MORALES, *supra* note 82, at xviii.

194. Corchado, *supra* note 186; *see also* 2007 WORLD REPORT, *supra* note 9, at 177.

195. Corchado, *supra* note 186.

196. Páez, *supra* note 22.

197. *Id.*

198. *Id.*

vember 2005 when Peruvian officials arrested Fernando Zevallos-Gonzales, whom the United States has listed as a Tier One Foreign Drug Kingpin.¹⁹⁹ Zevallos-Gonzales was sentenced to twenty years in prison and is in the custody of Peru.²⁰⁰

Despite these successes, the existence of Mexican drug cartels in Peru has spurred much violence. Peru's former Interior Minister, Pilar Mazzetti, stated that narco-terrorism has become the "main threat to security in Peru."²⁰¹ For example, in July 2006, the power of the drug mafia was illustrated when alleged Tijuana cartel hit men publicly assassinated a federal judge, Hernan Saturno Vergara, who was overseeing a major case against over two dozen of the cartel's members.²⁰² Mexican cartel presence in Peru has angered President Alan Garcia, who pledged extradition of drug traffickers to the United States when he met with President Bush in October 2006.²⁰³

The insurgence of Mexican cartels in Peru has also given life again to a guerilla organization in Peru, Sendero Luminoso (Shining Path).²⁰⁴ These Maoist insurgents are allegedly responsible for 54 percent of the 70,000 deaths that occurred between 1980 and 2000, including assassinations of judges and other political leaders.²⁰⁵ In 1991 and 1992 alone, Shining Path killed 120 judges and forced hundreds of others to resign.²⁰⁶ As a result, Peru had to instate "faceless judges" as a measure to protect the magistrates.²⁰⁷ Although the rebels have quieted down, they are potentially back again, offering protection to traffickers, organizing ambushes of police, and intimidating crop eradication and alternative development teams.²⁰⁸ By aligning with Peru's coca farmers and drug traffickers, Shining Path is able to "further their profits and fund their war."²⁰⁹ The first in the new round of attacks occurred in mid 2001 when

199. 2006 INCSR, *supra* note 24, at 59.

200. *Id.*

201. Latin American Weekly Report, *New Drug Strategy Bears Old Stamp*, LATINNEWS.COM, Oct. 3, 2006, <http://www.latinnews.com/> [hereinafter *New Drug Strategy*].

202. BBC News, *Peru Drugs Trial Judge Shot Dead*, BBC NEWS, July 20, 2006, <http://news.bbc.co.uk/2/hi/americas/5201716.stm>.

203. Press Release, White House, Joint Statement Between the United States of America and the Republic of Peru (Oct. 10, 2006), available at <http://www.whitehouse.gov/news/releases/2006/10/20061010-2.html>.

204. See Anne H. Geraghty, *Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World's Most Pervasive Problems*, 16 FLA. J. INT'L L. 371, 374 (2004).

205. Carla Salazar, *Peru Rebel Leader Gets Life Term, Shining Path Said to Have Killed Thousands*, S. FLA. SUN-SENTINEL, Oct. 14, 2006, at 22A, available at "2006 WLNR 17850399" on Westlaw.

206. Jay Nordlinger, *Terror on Trial: Thinking About Shining Path, And Those Like Them*, NAT'L REV., Apr. 10, 2006, at 37, available at <http://article.nationalreview.com/?q=NW1wNWZiOWU4MTlhNTIxNDVmMDliMjNhMzJhNzkwMWE=>.

207. Angel Pooao, *Former Political Pariah Stages Spectacular Return*, INTER PRESS SERVICE NEWS AGENCY, Apr. 18, 2006, <http://ipsnews.net/>, available at "4/18/06 INTERPSENG 00:00:00" ON WESTLAW.

208. 2006 INCSR, *supra* note 24, at 116.

209. Lewis, *supra* note 91.

the group ambushed and killed four policeman.²¹⁰ In December of last year, the group killed eight policemen while attacking an anti-drug patrol in the Huallaga Valley.²¹¹ Sometimes it has even been necessary for the Peruvian government to declare a state of emergency in certain coca-growing areas.²¹² With respect to these rebels, President Alan Garcia has voiced his support for the death penalty, although such punishment has only been allowed for treason during a time of war.²¹³ This resurgence of the Shining Path “poses a real nightmare scenario for U.S. drug warriors—and anyone concerned about peace and human rights in the region.”²¹⁴

C. U.S.-PERU TRADE PROMOTION AGREEMENT

President Alan Garcia of Peru worked hard with President George W. Bush and the U.S. Congress to promote the passage of a free trade agreement between the two countries.²¹⁵ The U.S.-Peru Trade Promotion Agreement (PTPA) was signed by trade representatives of the United States and Peru in April 2006 and subsequently ratified by an overwhelming majority in the Peruvian Congress in June 2006.²¹⁶ Finally, it was passed by the U.S. Congress and signed by both presidents in December 2007.²¹⁷ This agreement serves as an important tool to the Peruvian economy, allowing “the poorest sectors, the farmers in the Andes to have access to the buying power of the U.S. market,” helping to alleviate poverty and the stress on coca growers.²¹⁸ Of course, it is unlikely that this free trade agreement will have unintended consequences similar to those of NAFTA—that is, opened borders between the two nations that actually aid in the flow of drugs disguised as traded goods—because unlike the physical border between the United States and Mexico, the border between the United States and Peru is figurative. Compared to Mexico, it is much more difficult for Peruvian traffickers to smuggle drugs directly into the United States given the lack of a physical border, even if such drugs are under the cover of a legitimate shipment.

210. *Shining Path Reemerges in Peru, Maoist Guerrillas Profit from Prohibition in the Andes*, DRUG WAR CHRON.-NEWSL. (Stop the Drug War/DRCNet, Washington, D.C.), Jan. 4, 2002, available at http://stopthedrugwar.org/chronicle-old/218/shining_path.shtml [hereinafter *Shining Path Reemerges*].

211. McDonnell, *supra* note 150.

212. *President Lauds*, *supra* note 137.

213. *Id.*

214. *Shining Path Reemerges*, *supra* note 210.

215. Press Release, White House, President Bush Welcomes President Garcia of Peru to the White House (Oct. 10, 2006), available at <http://www.whitehouse.gov/news/releases/2006/10/20061010-4.html> [hereinafter 2006 President Bush Welcomes]; Press Release, White House, President Bush Welcomes President Garcia of Peru to the White House (Apr. 23, 2007), available at <http://www.whitehouse.gov/news/releases/2007/04/20070423-1.html> [hereinafter 2007 President Bush Welcomes].

216. *Background Note*, *supra* note 147.

217. See Office of the U.S. Trade Representative, Peru Trade Promotion Agreement, http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Section_Index.html (last visited Feb. 5, 2008).

218. 2006 President Bush Welcomes, *supra* note 215.

Free trade agreements with countries such as Peru can also be used as bargaining chips for the United States to require eradication and other anti-narcotics programs in coca-producing areas. For example, the U.S.-Andean Trade Promotion and Drug Eradication Act (ATPDEA), which was passed in 2002 and establishes trade preferences with Peru and other Andean countries, stipulates that the “beneficiary countries must reinstate the strategy of forced elimination of illegal crops.”²¹⁹ In December 2006, the U.S. Congress extended the ATPDEA preferences through June 2007, at which time Congress voted to extend it again for another eight months.²²⁰

V. CURRENT STATE OF PERUVIAN LAW ON DRUG CONTROL

Peru has a history of laws relating to drug control, although they are arguably scattered and incoherent. A serious problem is that there is widespread defiance for these laws. Former President Fujimori of Peru pointed out that “it is hard to imagine what sort of law against coca growing would ever be respected.”²²¹

A. PERUVIAN DECREE LAW 22095

Peruvian Decree Law 22095 of 1978 is Peru’s main instrument for drug control.²²² It supplemented the Penal Reform Code of 1991.²²³ Law 22095 is geared toward “repression of trafficking, rehabilitation of addicts, and reduction of coca cultivation.”²²⁴ This law strives to achieve three objectives: 1) to require that all licit coca be registered with ENACO; 2) to forbid the planting of coca in new areas or the restoration of existing coca; and 3) to create the Executive Office for Drug Control (OFECOD), to develop drug-control norms in accordance with the established international standards.²²⁵ Under Law 22095, the only legal coca cultivation and consumption is for traditional uses, and activity must be recorded with the Peruvian state-run agency overseeing licit coca. There is serious question, however, as to whether Law 22095 is adequately enforced, as “subsequent norms contradict it.”²²⁶

219. Abraham Lama, *Crop Substitution Strategy in Danger*, INTER PRESS SERVICE NEWS AGENCY, Sept. 12, 2002, <http://ipsnews.net/>, available at “9/12/02 INTERPR-SENG 00:00:00” ON WESTLAW.

220. *Background Note*, *supra* note 147; H.R. Res. 1830, 110th Cong. (2007) (enacted), available at <http://www.thomas.gov/cgi-bin/bdquery/z?d110:h.r.01830>.

221. JAMES C. JONES & BERNHARD AMLER, *Report on Thematic Evaluation of Alternative Development in Peru* 3 (Mar. 7, 1997) (prepared for the U.N. Drug Control Programme), available at http://www.unodc.org/pdf/Alternative%20Development/Peru_ThematicEval.pdf.

222. Decree Law No. 22095, *Ley de Represión del Tráfico Ilícito de Drogas* (1978) (Peru).

223. ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA, *supra* note 56, at 75.

224. JONES & AMLER, *supra* note 221, at 3.

225. *Id.*

226. *Id.*

B. OTHER LEGISLATION IN PERU

Other legislation in Peru includes Legislative Decree No. 753, which "recognizes coca-growing peasants as a group distinctive socially and economically from that of drug traffickers and establishes Alternative Development, to be conducted in 'Special Zones,' as a strategy."²²⁷ It is this law that created the Institute for Alternative Development (IDEA).²²⁸ Legislative Decree No. 824 established the organization charged with planning and managing alternative development programs.²²⁹ Decree Law 25428, one of the first of its kind in Latin America, toughened punishment for "investing or receiving income from drug trafficking," penalizing money laundering related to drugs with ten to twenty-five years' incarceration.²³⁰ Decree Law 25623 strengthened the regulation of chemicals involved in the manufacturing of cocaine.²³¹ Most notably, in mid 2005, the local government of Cusco, Peru attacked eradication policy by issuing a decree legalizing coca production in the surrounding La Convencion Valley for "medicinal, nutritional, and traditional uses."²³² Causing quite a political scandal by defying national law, this action "signifies that a new period of debate over coca, drugs, and drug policy has opened."²³³ Those in favor of widespread, uninhibited legal coca growing can use this ordinance to initiate discussion about modifying Peruvian drug control law.

VI. AN ANALYSIS OF THE INTERNATIONAL REGIME AGAINST DRUGS

"World trends as manifested in international forums have much influenced national drug-control legislation in Peru."²³⁴ The country has signed three major international agreements dealing with drugs. These agreements among signing nations build on each other to "codify internationally applicable control measures" with the goal of preventing illicit drug trafficking and abuse.²³⁵

A. SINGLE CONVENTION ON NARCOTIC DRUGS²³⁶

The Single Convention on Narcotic Drugs (1961 Convention), which introduced a narcotic classification system, is "perhaps the most important of the drug treaties because it forms the basic framework upon which

227. *Id.*

228. *Id.*

229. ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA, *supra* note 56, at 75.

230. JONES & AMLER, *supra* note 221, at 4.

231. *Id.*

232. *Coca on the March*, *supra* note 14.

233. *Id.*

234. JONES & AMLER, *supra* note 221, at 3.

235. U.N. Office on Drugs & Crime, UNODC Treaties, <http://www.unodc.org/unodc/ru/treaties/index.html> (last visited Feb. 5, 2008).

236. Single Convention on Narcotic Drugs, *opened for signature* Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 204 (entered into force Dec. 13, 1964), amended by 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, Mar. 25, 1972,

later treaties were written.”²³⁷ It established a worldwide ideology with respect to narcotic drugs.²³⁸ With regard to Peru’s participation, specifically, it marked a historic change in the toleration of coca.²³⁹ Appendix I of the 1961 Convention classifies the coca leaf as a controlled substance—the category with the most strict controls—and traditional coca chewing “as a form of drug addiction.”²⁴⁰ The practical effect is that the convention, in article 26, calls for the enforced eradication of all coca that is growing either illegally or wild.²⁴¹ The convention discusses legislative and administrative measures, reporting requirements, limitations on drug manufacturing and importation, and controls on trade, distribution, possession, and seizures of drugs.²⁴² The 1961 Convention calls for national administrative systems to regulate coca cultivation, which resulted in ENACO.²⁴³ The convention does not obligate growers to sell their harvests to the national agency, but it does direct the agency to take possession of coca crops as soon as they are harvested.²⁴⁴ Under the convention, coca chewing, labeled as an “undue use of drugs,” was supposed to be abolished by 1986 (within twenty-five years of the convention).²⁴⁵ The convention carves out some exceptions in order to protect coca growing for medical and scientific purposes and for export as a “flavouring agent.”²⁴⁶ (This provision sheltered The Coca-Cola Company.)

Because coca and cocaine are now on the same list, awareness about the substantial difference between the two has diminished. The convention’s preamble mentions the word “evil” multiple times in reference to narcotics addiction, further stigmatizing the coca leaf.²⁴⁷ Some say that the 1961 Convention amounts to “45 years of aggression against the coca plant.”²⁴⁸ Certainly, coca’s inclusion on this list makes it much more difficult to “shed light on the plant’s positive aspects and its potential benefits for the physical, mental and social health of the people who consume and cultivate it.”²⁴⁹

26 U.S.T. 1439, 976 U.N.T.S. 3, available at http://www.unodc.org/pdf/convention_1961_en.pdf [hereinafter 1961 Convention].

237. Melissa T. Aoyagi, *Beyond Punitive Prohibition: Liberalizing the Dialogue on International Drug Policy*, 37 N.Y.U. J. INT’L L. & POL. 555, 577 (2005).

238. David W. Rasmussen & Bruce L. Benson, *Rationalizing Drug Policy Under Federalism*, 30 FLA. ST. U. L. REV. 679, 726 (2003).

239. GAGLIANO, *supra* note 4, at 3.

240. Salazar, *Cocaleros Carve*, *supra* note 108.

241. 1961 Convention, *supra* note 236, art. 26(2).

242. *Id.*, arts. 4, 19-21, 30-34, 37.

243. *Id.*, art. 26(1).

244. *Id.*; see also *Coca Yes, Cocaine, No? Legal Options for the Coca Leaf*, DRUGS & CONFLICT DEBATE PAPERS (Transnational Institute, Netherlands), May 2006, at 5, available at <http://www.tni-archives.org/reports/drugs/debate13.pdf> [hereinafter *Legal Options*].

245. 1961 Convention, *supra* note 236, at art. 49(2); Melanie R. Hallums, *Bolivia and Coca: Law, Policy, and Drug Control*, 30 VAND. J. TRANSNAT’L L. 817, 828 (1997).

246. 1961 Convention, *supra* note 236, art. 27(1).

247. *Id.*, pmbl.

248. *Coca Growers Struggle*, *supra* note 136.

249. *Legal Options*, *supra* note 244, at 4.

B. CONVENTION ON PSYCHOTROPIC SUBSTANCES²⁵⁰

The Convention on Psychotropic Substances (1971 Convention) is similar to the previous 1961 treaty, with a few areas where the new convention makes additions or takes a slight divergence in attitude.²⁵¹ First, whereas the 1961 Convention primarily focuses on marijuana, cocaine, and opium, the 1971 Convention adds psychotropic substances to the list of prohibited drugs, except for research purposes and some treatment.²⁵² Second, whereas the 1961 Convention treats drugs as evil, the 1971 Convention focuses on the "health and welfare of mankind," thus illustrating the problem at hand as one of public health.²⁵³ Third, the 1971 Convention concentrates on drug manufacturing.²⁵⁴ Fourth, the 1971 Convention discusses criminal sanctions, but it still allows for alternatives.²⁵⁵ Thus, this convention begins to shift from a more administrative approach to a more punitive one, although it still retains flexibility.²⁵⁶ The 1971 Convention does not heavily focus on coca and cocaine.

C. CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES²⁵⁷

The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention), which has fewer members than the other two treaties, establishes additional mechanisms for enforcing the other two treaties.²⁵⁸ This convention, which revolves around cocaine,²⁵⁹ shifts further toward a punitive approach, leaving much less flexibility and choice to individual nations.²⁶⁰ The 1988 Convention in part centers on organized drug trafficking. Article 5 requires the "confiscation of proceeds . . . derived from offences [sic]" and the adoption of "measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds."²⁶¹ Article 6 provides for extradition of drug offenders and requires countries to help one another in this effort.²⁶² In addition, whereas the other treaties focus more on drug traf-

250. Convention on Psychotropic Substances, *opened for signature* Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175 (entered into force Aug. 16, 1976), *available at* http://www.unodc.org/pdf/convention_1971_en.pdf [hereinafter 1971 Convention].

251. The 1961 Convention was amended by the 1972 Protocol, which incorporates the updates reflected by the 1971 Convention so that both conventions are consistent.

252. 1971 Convention, *supra* note 250, art. 5.

253. *Id.*, pmbl.

254. Aoyagi, *supra* note 237, at 578.

255. Rasmussen & Benson, *supra* note 238, at 726.

256. Thomas, *supra* note 2, at 560.

257. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, S. Treaty Doc. No. 101-4, 28 I.L.M. 493 (entered into force Nov. 11, 1990), *available at* http://www.unodc.org/pdf/convention_1988_en.pdf [hereinafter 1988 Convention].

258. Aoyagi, *supra* note 237, at 580.

259. BOVILLE, *supra* note 1, at 136.

260. Thomas, *supra* note 2, at 561.

261. 1988 Convention, *supra* note 257, art. 5.

262. *Id.*, art. 6.

fickers and manufacturers, article 3 of the 1988 Convention allows for countries to ban possession of drugs for personal use.²⁶³ In an "attempt to reach a political balance between consumer and producer countries," this convention now puts a duty on both supplying and demanding countries.²⁶⁴

Two observations regarding these treaties are as follows: First, the relationship between this international regime on drug control and the international regime on trade is inverse.²⁶⁵ The narcotics conventions have moved from a more liberalized tone, encouraging action and setting standards, to a more prohibitionist nature, requiring nations to pursue certain action.²⁶⁶ By contrast, regarding free trade agreements, nations have moved from tighter governance to a more liberalized one, in opening up borders to trade and increasing opportunities for participating nations.²⁶⁷ Some argue that the development of the international drug conventions toward more requirements with regard to criminalization and punishment has "restrict[ed] the ability of individual nations to devise effective solutions to local drug problems."²⁶⁸

Second, there is inconsistency between the conventions regarding the status of the coca plant, which is categorized as a Schedule I drug under the 1961 Convention.²⁶⁹ But article 14 of the 1988 Convention includes language protecting "fundamental human rights and . . . traditional licit uses, where there is historic evidence of such use."²⁷⁰ The article does not define what constitutes traditional uses. Certainly, coca growers consider their long-standing and well-documented history of coca growing fundamental to everyday life. The harmless nature of traditional coca usage has been illustrated through extensive scientific research.²⁷¹ Nevertheless, efforts in Peru to change the status of coca with respect to these international regulations have failed.²⁷²

VII. SUCCESS STORIES, FAILED STRATEGIES, AND SUGGESTIONS

The Peruvian government is willing to cooperate with the United States on drug strategies. Romulo Pizarro, a former anti-narcotics chief of Peru, stated, "We want a greater state presence in coca-growing areas, more effective coca eradication, coca crop substitution and security for export cargo to limit smuggling We can't let these traffickers con-

263. *Id.*, art. 3.

264. David R. Bewley-Taylor & Cindy Fazey, *The Mechanics and Dynamics of the UN System for International Drug Control*, FORWARD THINKING ON DRUGS, Mar. 14, 2003.

265. Thomas, *supra* note 2, at 562.

266. *Id.*

267. *Id.*

268. Aoyagi, *supra* note 237, at 555.

269. 1961 Convention, *supra* note 236, at schedule I.

270. 1988 Convention, *supra* note 257, at art. 14.

271. *Legal Options*, *supra* note 244, at 7.

272. *Id.* at 6.

tinue to poison people's lives."²⁷³ The debate centers around which strategy, or combination thereof, best fights the illegal drug trade, while at the same time protects legal coca growers and the coca tradition.

A. ERADICATION

Aerial eradication is not used in Peru—only manual efforts are allowed.²⁷⁴ In both 2005 and 2006, the Peruvian government (along with voluntary efforts linked to alternative development programs) eradicated over 12,000 hectares of coca, surpassing its goals each year.²⁷⁵ Furthermore, in 2005, Peru destroyed coca nurseries that would have yielded 3,500 more hectares.²⁷⁶ That same year, however, there were approximately 4,000 hectares of coca cultivation in new areas.²⁷⁷ This is an increase of 23 percent in the area of traditional growth and 38 percent overall.²⁷⁸ The problem with eradication is that compared to the money that the coca industry yields, even millions of dollars toward eradication cannot stop the business. As areas are eradicated, illicit drug production is merely displaced into other areas. There must be an "economic force [to] replace coca," as without such a plan, "the forces of both government authority and the criminal underworld will keep on exploiting the farmers and cocaine entrepreneurs for their own gain."²⁷⁹ Eradication efforts alone fall short of truly addressing the problem of illicit coca growing, not to mention the economic and social consequences that result from destroying a very profitable crop for the poverty-stricken farmers as well as the producing country as a whole.

Some eradication efforts are voluntary (through alternative development programs), but many operations are involuntary, conducted by law enforcement or the military. For example, in recent years, the Peruvian government has focused on aggressive eradication campaigns in the Upper Huallaga Valley.²⁸⁰ As one can imagine, this can cause much strife as eradication personnel destroy the coca fields of farmers. Late last year, at least thirty farmers were injured when Peruvian police agents attacked a coca-growing community in the Alto Huallaga region, firing tear gas, shooting weapons, and even beating locals.²⁸¹ The police blamed the *cocaleros* for the incident, but a videotape showed "clear evidence of excessive force on the part of the police" in this "eradication operation that went out of control."²⁸² The Peruvian Interior Minister reiterated that

273. *Campaign Promises*, *supra* note 23.

274. 2006 WORLD REPORT, *supra* note 7, at 246.

275. 2007 INSCR, *supra* note 10, at 130; 2006 INSCR, *supra* note 24, at 116.

276. 2006 INSCR, *supra* note 24, at 117.

277. *Id.* at 118.

278. *Id.*

279. MORALES, *supra* note 82, at xxi.

280. 2007 INSCR, *supra* note 10, at 130; 2006 INSCR, *supra* note 24, at 117.

281. *Police Attack Cocaleros*, WKLY. NEWS UPDATE ON THE AMERICAS (Resource Ctr. of the Americas, Minneapolis, Minn.), Sept. 17, 2006, available at http://www.americas.org/item_29506.

282. *Id.*

these types of operations are only supposed to affect fields and not residential areas, and the incident led to several police and coca control and reduction program firings.²⁸³ Coca eradication programs were also temporarily suspended as a result.²⁸⁴

B. LAW ENFORCEMENT

In 2005, Peruvian port interdiction programs seized over eleven metric tons of cocaine destined for maritime shipment, the method by which 70 percent of the country's illicit drugs are exported, disguised as legitimate cargo.²⁸⁵ The Peruvian National Police placed a focus on attacking drug-processing locations. For example, in the Monzon area, over 600 metric tons of coca leaf and over 520 cocaine base laboratories were destroyed, and in the Apurimac/Ene River Valleys, 1,200 metric tons of coca leaf and over 760 cocaine base laboratories were destroyed.²⁸⁶ In 2006, the Peruvian government seized nearly twenty metric tons of cocaine and destroyed over 680 cocaine base laboratories.²⁸⁷ Peru also made strides in strengthening its police capacity by training 750 new police dedicated to counternarcotics.²⁸⁸ In April 2007, President Garcia ordered the use of warplanes to destroy clandestine airstrips and drug laboratories in the jungle.²⁸⁹ But it is difficult for law enforcement to stay ahead of new and increasingly agile drug trafficking organizations. As pressure builds in one area, growers "go someplace else where the opportunity is less hazardous."²⁹⁰ Consequently, when activity moves to remote areas of the forest with little road access, finding cocaine at its source, deep in these jungles, can be like finding a needle in a haystack.²⁹¹ Furthermore, law enforcement officers are often subjected to attack by those members of the Shining Path who have aligned with the coca industry. In 2006, at least twenty policemen have been ambushed and killed in such attacks.²⁹² Finally, law enforcement also faces a significant challenge in that some of their operations were suspended in 2001 after the Peruvian Air Force mistakenly shot down a small plane carrying American missionaries.²⁹³ The United States discontinued its assistance in the aerial shoot-to-kill policy, leaving "huge gaps in the counter-narcotics surveillance scheme," a situation exploited by drug traffickers in Peru and surrounding countries.²⁹⁴

283. *Id.*

284. *Id.*

285. 2006 INSCR, *supra* note 24, at 117.

286. *Id.*

287. 2007 INSCR, *supra* note 10.

288. *Id.*

289. Dan Collins, *Peru to Bomb Amazon Cocaine Labs*, BBC News, Apr. 3, 2007, <http://news.bbc.co.uk/2/hi/americas/6520863.stm>.

290. McDonnell, *supra* note 150.

291. MORALES, *supra* note 82, at 279.

292. *President Lauds*, *supra* note 137.

293. *Coca-leader Insists*, *supra* note 178.

294. *Shining Path Reemerges*, *supra* note 210.

C. ALTERNATIVE DEVELOPMENT

With the rapid expansion of illicit crops in the 1980s, alternative development appeared as a response system for local governments, acting in coordination with the international community.²⁹⁵ Though the application of alternative development programs in the Andean region began over two decades ago, it was not until 1998 that the United Nations General Assembly issued a common definition for alternative development:

[A] process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs, recognizing the particular sociocultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs.²⁹⁶

This definition, while long, emphasizes the notions of sustainability, development/growth, coordination, and flexibility—concepts important to the effective implementation of alternative development programs. Through this definition, the United Nations considers the economic, social, and cultural factors that contribute to the drug dilemma and attempts to “resolve it on several fronts through a balanced approach.”²⁹⁷ To that end, macro alternative development efforts must harmonize with those of the regional alternative development coordinator in Peru, the National Commission for Development and a Drug-free Lifestyle (DEVIDA).²⁹⁸ Alternative development projects cover about 10 percent of the coca cultivation areas in Peru.²⁹⁹ These programs may include “transport and energy infrastructure, basic social services (health, education, potable water), strengthened civil society (local governments and community organizations), environmental awareness and mitigation, agricultural production and marketing, and drug awareness programs.”³⁰⁰ For example, in 2005, the U.S. Agency for International Development (USAID) alternative development program completed 231 infrastructure projects and delivered assistance to over 25,000 Peruvian growers of licit crops.³⁰¹ USAID also finished the \$30 million Fernando Belaunde Terry highway project, which is anticipated to improve productivity in the Central Huallaga Valley.³⁰² Nearly 54,000 families have been involved in vol-

295. ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA, *supra* note 56, at 5.

296. *Id.* at 7.

297. U.N. Drug Control Programme, *The Economic Viability of Alternative Development* (1999) (internal paper), available at http://www.unodc.org/pdf/Alternative%20Development/EconomicViability_AD.pdf.

298. GLOBAL THEMATIC EVALUATION, *supra* note 146, at 3.

299. U.N. Office on Drugs & Crime, *Alternative Development – Drug Control Through Rural Development* (Sept. 1988) (article prepared for the ACC Network on Rural Development and Food Security), available at http://www.unodc.org/pdf/publications/alt-development_rural-development.pdf.

300. Lewis, *supra* note 91.

301. 2006 INCSR, *supra* note 24, at 117.

302. *Id.*

untary eradication programs—over 17,000 in 2006 alone.³⁰³

Ninety-five percent of the alternative development programs in Peru are funded by the United States.³⁰⁴ In 2006, the United States provided \$104 million of the \$124 million in foreign aid Peru received for alternative development.³⁰⁵ The catch: Peru does not get the money unless it is linked to voluntary eradication. For example, USAID and the Peruvian government have teamed up to provide money or loans to local farmers to replace their coca fields with other crops, ranging from rice, cacao, corn, and oil palm trees³⁰⁶ to citrus fruits, tea, and organic cotton.³⁰⁷ Coffee has supported about 5,000 families in Peru and oil palm projects have provided income to nearly 2,000 families.³⁰⁸ One program paid the equivalent of \$150 for each hectare of coca bush destroyed.³⁰⁹ In return, the farmers must sign affidavits that they will not use the funds to grow coca.³¹⁰ Of course, many only grow the allowed crops as a front and continue to farm coca. Most other crops are not as profitable in the long term, or in some cases, they simply are not viable to grow in Peru. Some believe it is an “inescapable fact that no type of alternative crop proves as profitable as growing coca,” for several reasons.³¹¹ First, the coca plant has evolved to grow in the conditions of the jungle and does not need much fertilizer, whereas other plants often require more care in order to grow in the nutrient-poor soil of the area.³¹² Second, because road systems in remote areas are weak or nonexistent, alternative crops that yield fruit or other perishable products are unrealistic to implement, as these products spoil by the time farmers can get them to the market on foot or on the backs of animals.³¹³ Amazingly, it is actually cheaper to ship goods from Lima to New York than it is to transport goods to Lima from the jungle in Peru.³¹⁴ Third, prices for some of the alternative crops are often unstable as compared to coca.³¹⁵ For example, the prices for coffee and cacao have fallen internationally, but the price of the coca leaf keeps multiplying.³¹⁶

303. 2007 INCSR, *supra* note 10, at 133.

304. GLOBAL THEMATIC EVALUATION, *supra* note 146, at 11.

305. Milagros Salazar, *U.S. Aid in Free Fall as Cocaine Production Soars*, INTER PRESS SERVICE NEWS AGENCY, Feb. 23, 2007, <http://ipsnews.net/>, available at “2/23/07 INTERPSENG 00:00:00” ON WESTLAW [hereinafter Salazar, *U.S. Aid in Free Fall*].

306. Morales, *supra* note 82, at xx.

307. *Living on Earth*, *supra* note 103.

308. GLOBAL THEMATIC EVALUATION, *supra* note 146, at 5.

309. Abraham Lama, *Cash For Farmers Who Destroy Their Coca Crops*, INTER PRESS SERVICE NEWS AGENCY, Nov. 18, 2002, <http://ipsnews.net/>, available at “11/18/02 INTERPSENG 00:00:00” ON WESTLAW [hereinafter Lama, *Cash for Farmers*].

310. Morales, *supra* note 82, at xx.

311. *New Drug Strategy*, *supra* note 201.

312. MORALES, *supra* note 82, at xvi.

313. *Coca Growers Struggle*, *supra* note 136.

314. Abraham Lama, *Coca Could Make a Comeback, Gov’t Officials Say*, INTER PRESS SERVICE NEWS AGENCY, Mar. 27, 2002, <http://ipsnews.net/>, available at “3/27/02 INTERPSENG 00:00:00” ON WESTLAW.

315. *Id.*

316. *Id.*

Alternative development programs are not without active internal opposition, thus another problem plaguing this strategy is that some of the farmers are afraid to participate in some programs, fearing revenge from drug traffickers.³¹⁷ Although a recent study found that security and social peace ranked high as an impact of alternative development, hostile behavior has been documented.³¹⁸ In 2002, two peasant farmers who publicly supported crop substitution were shot to death by drug gang assassins.³¹⁹ And in 2005, strikes and threats of violence forced regional offices for the alternative development program to shut down for nearly one-third of the year.³²⁰

Of course, no alternative development program is feasible without funds. Funding for the war in Iraq has dramatically decreased money available for alternative programs in Peru. In recent years, anti-drug aid from the United States to Peru has dropped.³²¹ The U.S. 2007-2008 fiscal year budget presented to Congress allocates only sixty-six million in aid, nearly half of what it provided to Peru last year.³²² As a result, President Alan Garcia is going to have to "look to [Peru's] own resources to fund the fight against drugs."³²³

D. CONTROLLING CHEMICALS

As stated before, several chemicals are essential to the manufacture of cocaine. To make just one kilogram of cocaine base, it takes approximately "three liters of concentrated sulfuric acid, 10 kilos of lime, 60-80 liters of kerosene, 200 grams of potassium permanganate, and one liter of concentrated ammonia."³²⁴ Because these chemicals are widely traded internationally for legitimate commercial uses, it is difficult for governments to differentiate between licit and illicit use and requires extensive international cooperation. Article 12 of the 1988 Convention provides framework for international chemical control, providing obligations and standards to identify suspicious transactions and prevent the diversion of chemicals to illicit drug manufacture.³²⁵ For example, the convention requires that countries notify each other with details about the shipment when certain chemicals are being exported from one country to the other.³²⁶ Under these guidelines, countries set up elaborate systems to ensure that legitimate end-uses for traded chemicals are established, by verifying that certain chemicals and the quantities ordered are appropriate for the needs of the buyer and tracking shipments to prevent their

317. Lama, *Cash for Farmers*, *supra* note 309.

318. GLOBAL THEMATIC EVALUATION, *supra* note 146, at 9.

319. Lama, *Cash for Farmers*, *supra* note 309.

320. 2006 INCSR, *supra* note 24, at 117.

321. Salazar, *U.S. Aid in Free Fall*, *supra* note 305.

322. *Id.*

323. *Id.*

324. 2007 INCSR, *supra* note 10, at 20.

325. 1988 Convention, *supra* note 257, at art. 12.

326. *Id.*, art. 10.

diversion.³²⁷ But even in countries where systems exist to control chemicals, traffickers can mislabel or re-package their shipments as non-controlled chemicals. Furthermore, some traffickers try to stay ahead of the system by finding or developing new drugs with similar properties that can be used to manufacture cocaine in place of the controlled drugs.

E. NARCOTICS EDUCATION

Narcotics education includes, for example, anti-drug programs and media campaigns, abstinence-only drug education, and safe drug use advocacy (although there is debate over whether the latter is permissible under the United Nations drug conventions).³²⁸ For the most part, these strategies employ efforts to halt drug use based in morality. So, whether to implement these programs should be an issue for Peru to decide. But most of the illegal drugs produced in Peru are not consumed by Peruvians, but rather by Europeans and Americans.³²⁹ Thus, focusing on cocaine consumption within Peru is the strategy least likely to produce positive results in the war on drugs.

F. THE ROAD AHEAD

It is necessary to form a greater understanding of the complexity of implementing alternative development programs, the sensitivities of local coca growers, and what these programs can realistically hope to accomplish given the growing demand for illicit drugs. Crop substitution alternatives must be at least as profitable as coca in order to wean farmers off growing this traditional plant. Coffee and oil palm trees most likely have the best potential as alternative crops. For example, oil-palm cultivation affords farmers a "permanent agricultural activity," creating jobs and generating an annual income of \$700 per hectare of oil palm.³³⁰ Improvements in Peru's transportation system will expand alternative crop options to remote areas. Where crops other than coca are not feasible, Peru should focus on increasing the legal markets for coca, diverting it from cocaine production and at the same time reducing the need for eradication. When alternative development programs are linked to voluntary eradication, the farmers who choose not to participate because they cannot sustain an income without growing coca often find their crops involuntarily eradicated. Thus, the alternative development becomes merely a "veiled threat" to further the United States' zero-coca policy.³³¹

Efforts must also continue to focus on controlling the chemical trade for illicit purposes. In 2006, police seized only 2 percent of these chemicals.³³² This strategy involves increasing law enforcement efforts moni-

327. 2007 INCSR, *supra* note 10, at 75.

328. Aoyagi, *supra* note 237, at 575-76.

329. *New Drug Strategy*, *supra* note 201.

330. ALTERNATIVE DEVELOPMENT IN THE ANDEAN AREA, *supra* note 56, at 70.

331. GLOBAL THEMATIC EVALUATION, *supra* note 146, at 10.

332. Salazar, *U.S. Aid in Free Fall*, *supra* note 305.

toring shipments by land and sea and requires extensive worldwide cooperation. In 2006, the United Nations adopted a resolution that requests countries to provide the International Narcotics Control Board (INCB) estimates of their legitimate requirements for chemicals.³³³ This kind of central coordination is a step in the right direction. Although a drug trafficking organization operates in the shadows, "to prosper as a business, it must enter the legitimate commercial world, exposed by its dependence on raw materials [and] processing chemicals."³³⁴ If a unified register of companies legally purchasing chemical inputs is compiled, law enforcement can more easily pinpoint chemicals going to the underground world.³³⁵ To the extent that materials necessary to convert coca to cocaine are absent, the illegal drug trade suffocates.

VIII. CONCLUSION

The international narcotic problem and tensions between countries with varying needs and desires will not be resolved with ease. The associated issues and potential solutions are complex, consequential, and rampant with emotion rooted in culture. With regard to the cocaine problem between in the Americas, we must balance different strategies to fight the war on drugs, taking into account local concerns and realistic expectations, especially where policies directly affect communities. Any approach should be consensus-driven, agreed to by the people and the politicians. Peru must and has pledged to help shoulder the burden of change.³³⁶ To that end, it is important to maintain flexibility in international narcotics treaties to allow for independent drug policies by member countries, so that action is not unilateral and unfitting for such a worldwide issue. These strategies can still allow for successes in the global war on drugs, but it will also ensure that the history of coca and its importance to Peru can survive. In the words of one grower, "Coca is our culture; Coca is Peru."³³⁷

333. 2007 INCSR, *supra* note 10, at 78.

334. *Id.* at 24.

335. Salazar, *U.S. Aid in Free Fall*, *supra* note 305.

336. *Id.*

337. *Coca Growers Struggle*, *supra* note 136.